

June 19, 2009

The Honorable Jean Cunningham, Chair
State Board of Elections
Washington Building, First Floor,
1100 Bank Street,
Richmond, VA 23219

RE: Voter Residency Task Force -- Draft Rules on Voter Residency

Dear Chairwoman Cunningham,

We are writing today to express support for the proposed rules on residency released by the Voter Residency Task Force. We believe these rules are generally helpful to students seeking to register to vote in their college communities and will help to mitigate problems they have faced in past elections. Nonetheless, we believe that some small improvements are necessary and submit the following comments with the goal of further strengthening the proposed regulations.

A. Primacy of Individual's Intent

The State Board of Elections is required by Va. Code § 24.2-404(D) to establish rules and regulations to implement the law on determining a person's residence for voting purposes. House Bill No. 1878, enacted May 6, 2009, added § 24.2-404(D) and also significantly altered the law on determining residence by changing the definition of "residence" in Va. Code § 24.2-101. The General Assembly, through HB1878, eliminated a list of factors that were previously used to determine the residence of an individual.¹ The expressed intent of the individual was only one of those several factors considered to be indicia of residency. The new definition of "residence" eliminates all of the factors, providing instead that "[t]o establish domicile, a person must live in a particular locality with the intention to remain." Thus, the General Assembly has made the intent of the individual the primary and conclusive issue in determining the residence of a person for voting purposes.

The proposed regulations reflect this change in the law. Specifically, paragraphs 1 and 2 state that an individual can establish his or her domicile in Virginia by intending to either remain permanently or to remain for the time at least. Furthermore, since the proposed regulations do not rely on the now-eliminated factors in the prior definition of "residence," the proposed regulations are a step forward in clarifying and simplifying the rules on residence in Virginia. Moreover, the explicit treatment of students in the proposed rules restricts the ability of local

¹ Many of these factors improperly prevented students from being added to voter registration rolls. They included tax dependent status, financial independence, residence of parents and "other factors reasonably necessary to determine the qualification of an individual to register to vote." Va. Code Ann. § 24.2-101 (2008)

registrars in jurisdictions with a history of excluding eligible students from the voter rolls from continuing to do so on the basis of residency. That said, we make the following observations and recommendations:

Paragraph 2, subparagraph (*b*) may cause problems for students who are attempting to register to vote, and may therefore require redrafting. It provides:

A person with specific intent to leave his current location at a fixed date in the future has not established the requisite intent for the purposes of establishing domicile.

This language can easily affect students living in dormitories since they are regularly required to vacate their rooms at the end of the semester or academic year. Insofar as that is a “fixed date” by which such students must “leave their current location,” this language could be interpreted to prevent students living in dormitories from registering to vote regardless of the student’s intention.

It is clear that this is not the intended result of the proposed rules. Paragraph 16, subparagraph (e) indicates that dormitories are not to be considered temporary housing. If paragraph 2 is understood in light of paragraph 16, the end of a semester or academic year should not be a “fixed date” by which a student intends to leave his or her current location. Nonetheless, this interpretation could be clarified in the proposed rules by either changing the text of paragraph 2(b) or by adding an explanatory rule for students in dormitories and other university housing such as fraternity and sorority houses. Such a rule could state, “A college student living in dormitories or other on-campus housing shall not be considered to have a specific intent to leave his current location if the student has the intent to remain in that location for the time at least, but must vacate his dormitory at the conclusion of a semester or academic year.”

As matter of form, the regulations would be more easily understood if the subparagraphs in paragraph 2 were re-ordered so that (c) were the second subparagraph. The regulations would then read as follows:

- 2) Required Intent:
 - a) A person who intends to remain in a location forever has established the required intent for the purposes of establishing domicile.
 - b) A person who intends to remain in his current location for the time at least and may leave in the future, upon the happening of a future contingency, has established the requisite intent for the purposes of establishing domicile.
 - c) A person with specific intent to leave his current location at a fixed date in the future has not established the requisite intent for the purposes of establishing domicile.

This reordering reflects the most important factor, intent, and the two ways an individual may establish that intent, and then states how intent is not established.

B. Sections Specifically Affecting Students

Paragraphs 5, 14, and 16 of the proposed rules each specifically address issues of residency for college and university students. Each of these paragraphs strongly support the interests of students with respect to voter registration and should help ensure students are able to register.

Paragraph 5, however, may require clarification to protect the interests of student voters. It provides in part:

No presumption for or against residency shall be afforded to anyone who is present or absent while a student at any institution of learning.

This language appears intended to ensure that the residency rules are non-discriminatory and that the individuals identified are neither aided nor hindered by their status. Additionally, it reflects the current residency law, as discussed above by allowing individuals to establish residency according to their intent. It is also consistent with Paragraph 14 which states that students may establish residency at their college or university if they have no specific intent to return to their former home after graduation.

However, the final sentence of Paragraph 5 is potentially problematic. It states:

Such person shall be deemed a resident in the precinct in which he resided next prior to his temporary absence.

This sentence is problematic in two ways. First, it addresses only temporary absences while the rest of the paragraph addresses presumptions regarding individuals who are either temporarily absent or temporarily present. Second, if it were interpreted to address both absence and presence it could create a presumption against students by “deeming” them to be residents of the precinct where they resided prior to their presence.

Paragraph 5 could more effectively protect student interests if it concluded with the following sentence: “Such persons may establish domicile in the precinct where they are located in the same manner as all other persons.” This language more closely tracks the non-discriminatory purpose of Paragraph 5.

Paragraph 14 appears to strongly respect a student’s right to choose to vote at his or her college jurisdiction or at his or her home and is consistent with the approach of other states.²

Paragraph 16 is similarly beneficial to student registrants because it unequivocally makes clear that dormitories are not temporary addresses that require additional investigation.

² See NC Gen. Stat. § 163-57(11)

For the foregoing reasons, we believe the recent change to the Virginia statutes and the proposed rules are an important step forward for student voters who seek to register to vote in their college communities. Our comments are intended to help to improve the Task Force's already strong proposal. With these improvements, the Task Force can effectively eliminate past obstacles faced by students when registering to vote, and ensure that those obstacles do not arise in future elections.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Neuman', with a long horizontal flourish extending to the right.

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